



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 3, 1991

Ms. Elizabeth A. Lunday
Assistant City Attorney
City of Mesquite
P. O. Box 850137
Mesquite, Texas 75185-0137

OR91-609

Dear Ms. Lunday:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13863.

You have received two requests for a certain legal opinion prepared by a private attorney for the Mesquite City Council. You assert that the City of Mesquite did not pay for the legal opinion and that it was prepared for the City Attorney and certain members of the City Council in their capacities as private citizens. On the basis of this assertion, you claim that the legal opinion is not a public record and is not subject to the Open Records Act. You also claim, should the legal opinion be deemed a public record, that it is excepted from required public disclosure by sections 3(a)(1), 3(a)(7), and 3(a)(11).

Section 3(a) of the Open Records Act provides:

All information collected, assembled, or maintained by or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance *or in connection with the transaction of official business* is public information (Emphasis added.)

You advise us of the following:

The legal opinion that is the subject of Mr. Gonzales' Open Records request was not collected, assembled, or maintained by or for the City of Mesquite pursuant to law or ordinance, nor was it collected, assembled, or maintained by or for the City of Mesquite in connection with the transaction of official business. . . . [T]he legal opinion was privately sought by Mr. B.J. Smith and certain members of the Mesquite City Council in their private capacity and paid for with private monies. No office or department of the City of Mesquite maintains the legal opinion or has a copy of the legal opinion as part of any City record. No official or public action has been taken or determination made due to the legal opinion.

We have examined the document at issue. The letter is directed to the "Mayor of the City of Mesquite" and addresses whether a school board member may have violated conflict of interest laws under chapter 171 of the Local Government Code or whether he may have violated certain provisions of the Texas Constitution by virtue of the school board member's participation in the collection of taxes for the City of Mesquite. On its face, it is clear that this information relates to the transaction of official business. In addition, the city council may not be said to lack "access" to the information. *See* Attorney General Opinion JM-1143 (1990). Accordingly, we conclude that the letter constitutes "information collected, assembled, or maintained by or for" a governmental body.

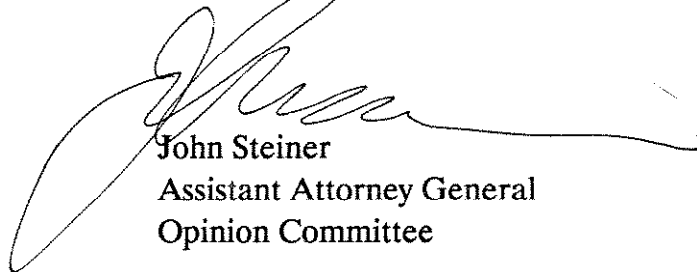
You claim that of the requested information is excepted from required public disclosure by the attorney-client privilege, as incorporated into the Open Records Act by sections 3(a)(1) and 3(a)(7). We agree. *See* Open Records Decision No. 574 (1990). Accordingly you may withhold the requested information.

You also claim that some of the requested information is excepted by section 3(a)(11), which excepts "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." Because any protection under section 3(a)(11) will overlap with protection under the attorney-

client privilege, we need not address the applicability of your section 3(a)(11) claim.
Id. at 2.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-609.

Yours very truly,



John Steiner
Assistant Attorney General
Opinion Committee

JS/GK/lcd

Enclosures: Returned Documents
Open Records Decision No. 574

Ref.: ID# 13863

cc: Mr. Juan C. Gonzales
4219 Sherwood Drive
Mesquite, Texas 75150